



Brussels, 25.10.2022
C(2022) 7175 final

COMMISSION DELEGATED REGULATION (EU) .../...

of 25.10.2022

amending the regulatory technical standards laid down in Delegated Regulations (EU) 2015/2205, (EU) 2016/592 and (EU) 2016/1178 as regards the date at which the clearing obligation takes effect for certain types of contracts

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Under EMIR Article 4(2), intragroup transactions may be exempted from the clearing obligation. Intragroup transactions with a third-country group entity, may also be exempted if the Commission has adopted an equivalence decision under EMIR Article 13(2), for the third country where the group entity is established. To date, the Commission hasn't adopted such equivalence decision for the purpose of Article 4.

The three Commission Delegated Regulations on the clearing obligation, i.e. Commission Delegated Regulation (EU) 2015/2205 and Commission Delegated Regulation (EU) 2016/1178 regarding interest rate derivative classes as well as Commission Delegated Regulation (EU) 2016/592 regarding credit derivative classes, include a provision related to intragroup transactions with a third-country group entity. The provision provides for a deferred date of application of the clearing obligation of up to three years for these transactions, in the absence of the relevant equivalence decision. The current deferred date for the clearing obligation is 30 June 2022.

Taking into account the challenges of assessing equivalence in the context and thus in reaching the necessary equivalence decisions by the deferred date of application, the possible negative consequences in terms of substantial costs for group entities in case of no changes, the amendments propose to extend the deferred date of application of the clearing obligation for intragroup transactions set in the three Commission Delegated Regulations to 30 June 2025.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The proposed amendments are an adaptation of the timelines to facilitate the current implementation of the RTS on the clearing obligation and are limited in nature. Moreover, the current deadline related to these provisions is due to expire soon. Given the limited scope of the amendments and the urgency of the matter, in accordance with Article 10(1) of the ESMA Regulation, it would have been disproportionate for ESMA to conduct open public consultations or full analyses of the potential related costs and benefits.

However, the advice of the Securities and Markets Stakeholder Group has been requested. ESMA consulted the European Systemic Risk Board (ESRB), which indicated having no objection from a macro prudential perspective.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The delegated act introduces a modification to the three existing RTS on the clearing obligation.

Article 1 modifies Article 3 of Commission Delegated Regulation (EU) 2015/2205 regarding interest rate derivative classes in the following way:

- Article 3(2) is modified by extending the deferred date of application of the clearing obligation for intragroup transactions with a third-country group entity 30 June 2025.

Article 2 modifies Article 3 of Commission Delegated Regulation (EU) 2016/592 regarding credit derivative classes in the following way:

- Article 3(2) is modified by extending the deferred date of application of the clearing obligation for intragroup transactions with a third-country group entity 30 June 2025.

Article 3 modifies Article 3 of Commission Delegated Regulation (EU) 2016/1178 regarding interest rate derivative classes in the following way:

- Article 3(2) is modified by extending the deferred date of application of the clearing obligation for intragroup transactions with a third-country group entity 30 June 2025.

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories¹, and in particular Article 5(2) thereof,

Whereas:

- (1) Commission Delegated Regulations (EU) 2015/2205², (EU) 2016/592³ and (EU) 2016/1178⁴ specify, among others, the dates from which the clearing obligation for contracts pertaining to the classes of over-the-counter (OTC) derivatives set out in the Annexes to those Delegated Regulations take effect. Article 3(2), first subparagraph, point (a), of those Delegated Regulations contain deferred dates of application for the clearing obligation for OTC derivative contracts concluded between counterparties which are part of the same group and where one counterparty is established in a third country and the other counterparty is established in the Union. Those deferred dates of application were necessary to ensure that such OTC derivative contracts were not subject to the clearing obligation before the adoption of an implementing act pursuant to Article 13(2) of Regulation (EU) No 648/2012.
- (2) To this date, no implementing act pursuant to Article 13(2) of Regulation (EU) No 648/2012 has yet been adopted in relation to the clearing obligation. The application of the clearing obligation for OTC derivative contracts concluded between counterparties which are part of the same group and where one counterparty is established in a third country and the other counterparty is established in the Union, without the adoption of the implementing act referred to Article 13(2) of Regulation (EU) No 648/2012, would have a detrimental economic impact on Union counterparties. The application of the clearing obligation for OTC derivative intragroup contracts with a third-country counterparty should therefore be further deferred.

¹ OJ L 201, 27.7.2012, p. 1.

² Commission Delegated Regulation (EU) 2015/2205 of 6 August 2015 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation (OJ L 314, 1.12.2015, p. 13).

³ Commission Delegated Regulation (EU) 2016/592 of 1 March 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation (OJ L 103, 19.4.2016, p. 5).

⁴ Commission Delegated Regulation (EU) 2016/1178 of 10 June 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation (OJ L 195, 20.7.2016, p. 3).

- (3) Delegated Regulations (EU) 2015/2205, (EU) 2016/592 and (EU) 2016/1178 should therefore be amended accordingly.
- (4) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority (ESMA).
- (5) The amendments to Delegated Regulations (EU) 2015/2205, (EU) 2016/592 and (EU) 2016/1178 are limited adjustments of the existing regulatory framework. Given the limited scope of those amendments and the urgency of the matter, it would be highly disproportionate for ESMA to conduct open public consultations or analyses of the potential related costs and benefits. ESMA nevertheless requested the advice of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁵ and consulted the European Systemic Risk Board.
- (6) To provide market participants with legal certainty as quickly as possible, this Regulation should enter into force as a matter of urgency,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Delegated Regulation (EU) 2015/2205

In Article 3(2), first subparagraph, of Delegated Regulation (EU) 2015/2205, point (a) is replaced by the following:

- ‘(a) 30 June 2025 in case no equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts set out in the Annex to this Regulation in respect of the relevant third country;’.

Article 2

Amendment to Delegated Regulation (EU) 2016/592

In Article 3(2), first subparagraph, of Delegated Regulation (EU) 2016/592, point (a) is replaced by the following:

- ‘(a) 30 June 2025 in case no equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts set out in the Annex to this Regulation in respect of the relevant third country;’.

Article 3

Amendment to Delegated Regulation (EU) 2016/1178

In Article 3(2), first subparagraph, of Delegated Regulation (EU) 2016/1178, point (a) is replaced by the following:

- ‘(a) 30 June 2025 in case no equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that

⁵ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

Regulation covering the OTC derivative contracts set out in the Annex to this Regulation in respect of the relevant third country;’.

Article 4

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 25.10.2022

For the Commission

The President

Ursula VON DER LEYEN